

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JAMES C. SPENCE, ID # 712697,)
Plaintiff,)
vs.) No. 3:05-CV-0941-M
MARK TOLLE,)
Defendant.)

**FINDINGS, CONCLUSIONS, AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to the provisions of 28 U.S.C. § 636(b), and an Order of the Court in implementation thereof, subject cause has previously been referred to the United States Magistrate Judge. The findings, conclusions, and recommendation of the Magistrate Judge are as follows:

I. FINDINGS AND CONCLUSIONS

On May 1, 2005, the Court received a letter from plaintiff related to events involving Judge Mark Tolle. On May 12, 2005, the Court construed the letter as a civil action under 42 U.S.C. § 1983 and opened the instant civil action. On May 25, 2005, the Court entered a Notice of Deficiency and Order wherein it informed plaintiff that he had not paid the \$250 filing fee or requested to proceed *in forma pauperis*. On June 13, 2005, plaintiff filed a motion to dismiss wherein he explains that he had no intent to file a civil action.

The Court reasonably construes the document filed on June 13, 2005, as a notice of dismissal filed under Fed. R. Civ. P. 41(a). That Rule provides that “an action may be dismissed by the plaintiff . . . by filing a notice of dismissal at any time before service by the adverse party of an answer or motion for summary judgment, whichever first occurs.” Respondent has not yet filed an answer or a summary judgment motion. Voluntary dismissal under Rule 41(a) is, therefore, proper.

II. RECOMMENDATION

For the foregoing reasons, the undersigned Magistrate Judge hereby recommends that the Court construe the document filed by plaintiff on June 13, 2005, as a notice of dismissal filed under Fed. R. Civ. P. 41(a) and **DISMISS** the instant action without prejudice.

SIGNED this 18th day of July, 2005.


IRMA CARRILLO RAMIREZ
UNITED STATES MAGISTRATE JUDGE

INSTRUCTIONS FOR SERVICE AND NOTICE OF RIGHT TO APPEAL/OBJECT

The United States District Clerk shall serve a copy of these findings, conclusions and recommendation on all parties by mailing a copy to each of them. Pursuant to 28 U.S.C. § 636(b)(1), any party who desires to object to these findings, conclusions and recommendation must file and serve written objections within ten days after being served with a copy. A party filing objections must specifically identify those findings, conclusions or recommendation to which objections are being made. The District Court need not consider frivolous, conclusory or general objections. Failure to file written objections to the proposed findings, conclusions and recommendation within ten days after being served with a copy shall bar the aggrieved party from appealing the factual findings and legal conclusions of the Magistrate Judge that are accepted by the District Court, except upon grounds of plain error. *Douglass v. United Services Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (*en banc*).


IRMA CARRILLO RAMIREZ
UNITED STATES MAGISTRATE JUDGE